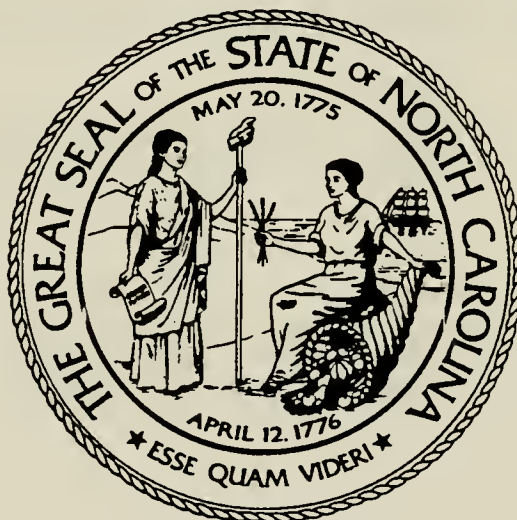


**REPORT OF THE
JUDICIAL SELECTION STUDY
COMMISSION**

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**REPORT TO THE
GOVERNOR, CHIEF JUSTICE, ATTORNEY GENERAL
AND THE 1989 GENERAL ASSEMBLY
OF NORTH CAROLINA**

February 15, 1989

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---CHAPTER 873, 1987 SESSION LAWS---

PART XIXA.----JUDICIAL SELECTION STUDY COMMISSION

Sec. 19A.1. There is created a Judicial Selection Study Commission, to be composed of 20 members. The Governor shall appoint four members, at least two of whom shall be members of the General Assembly, at least two of whom shall be attorneys licensed to practice in North Carolina, and at least two of whom may not be attorneys. The Lieutenant Governor shall appoint four members, all of whom shall be members of the Senate. The Speaker of the House of Representatives shall appoint four members, all of whom shall be members of the House of Representatives. The Chief Justice shall appoint four members, one of whom shall be a Supreme Court Justice, one of whom shall be a Court of Appeals Judge, one of whom shall be a Superior Court Judge, and one of whom shall be a District Court Judge. The Attorney General shall appoint four members, two of whom shall be attorneys licensed to practice in North Carolina, and two of whom may not be attorneys.

Sec. 19A.2. The Commission should study the method of selecting Judges in North Carolina and recommend any changes needed to improve the system.

Sec. 19A.3. The President of the Senate and the Speaker of the House shall each designate a cochairman of the Commission.

Sec. 19A.4. The Commission may meet in the Legislative Building upon approval of the Legislative Services Commission and will be staffed by the Legislative Services Commission.

Sec. 19A.5. The Commission shall report its findings, and its recommendations for changes in the method for selection and retention of judges in North Carolina, if any, by February 15, 1989, to the Governor, the General Assembly, the Chief Justice, and the Attorney General. It may also make an interim report to those parties before the 1988 General Assembly.

Sec. 19A.6. The members of the Commission shall receive the same per diem and reimbursement for travel expenses as members of the General Assembly.

Sec. 19A.7. There is appropriated from the General Fund to the Judicial Selection Study Commission the sum of twenty-five thousand dollars (\$25,000) for the 1987-1988 fiscal year to implement the provisions of this Part.

MEMBERSHIP JUDICIAL SELECTION STUDY COMMISSION

Lt. Governor's Appointments

Sen. Dennis J. Winner, Cochair
Asheville

Sen. George B. Daniel
Yanceyville

Sen. Charles W. Hipps
Waynesville

Sen. R. C. Soles, Jr.
Tabor City

Speaker's Appointments

Rep. H. M. Michaux, Jr., Cochair
Durham

Rep. Donald M. Dawkins
Rockingham

Rep. Frank J. Sizemore, III
Greensboro

Rep. Dennis A. Wicker
Sanford

Governor's Appointments

Sen. Howard Bryan
Statesville

Mr. C. Allen Foster
Greensboro

Ms. Kay F. Patseavouras
Greensboro

Rep. Johnathan L. Rhyne, Jr.
Lincolnton

Chief Justice's Appointments

Hon. George W. Bason
Raleigh

Hon. Henry E. Frye
Raleigh

Hon. Sarah Parker
Raleigh

Hon. Thomas W. Ross
Greensboro

Attorney General's Appointments

Mr. George G. Cunningham
Wilkesboro

Ms. Catherine Harper
Charlotte

Dr. Virginia Newell
Winston-Salem

Mr. William G. Smith
Wilmington

Staff: Mr. Jim Drennan

Clerk: Janet Puryear

FINDINGS AND RECOMMENDATIONS

Introduction

The Judicial Selection Study Commission was created by Ch. 873, 1987 Session Laws to study the method of selecting Judges in North Carolina and recommend any changes needed to improve the system. The Commission is composed of twenty members, with four members each appointed by the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, and the Chief Justice of the Supreme Court. Co-chairmen were appointed by the Speaker and the Lieutenant Governor. The Commission met seven times in 1988, and twice in 1989. It heard presentations by Chief Justice James Exum; former chief justice Joseph Branch; Professor Irv Joyner, chairman of the legislative committee of the North Carolina Association of Black Lawyers; Kathleen Sampson, director of research of the American Judicature Society; Rep. Bruce Gibson, Texas House of Representatives; Bernard Conway, former president of the New Jersey State Bar; Judge Robert Bell, Maryland Court of Special Appeals; and Judge John Corderman, Maryland Circuit Court. In addition, representatives of the North Carolina Bar Association attended all meetings and participated in the Committee's discussion, as did representatives of the North Carolina Academy of Trial Lawyers.

The Commission's work focused on two basic questions. Does the North Carolina system of judicial selection need changing? If so, how should it be changed? The Commission's answers to those questions are that the system should be changed, and that the best system for North Carolina is one that would provide for appointment of all judges by the Governor for initial four year terms if the nominee is confirmed by both houses of the General Assembly. The Commission also believes that judges so confirmed should retain the office upon review of a nonpartisan commission and reconfirmation by the General Assembly for eight year terms. The Commission recommends that the current Judicial Standards Commission perform that review. A more complete description of the Commission's recommendations follows.

The need for change.

Judges in North Carolina are elected. Since Reconstruction, that is what the Constitution has said. It is at best a half-truth. When a judge dies,

resigns, retires or is removed in the middle of a term, he is initially replaced by appointment of the Governor, and that appointee serves until the office can be filled by election. That appointee almost always seeks election, almost never has opposition, and if he does, he almost always wins the election. He then keeps his judgeship for as long as he wants it. Although there are regular elections, he is likely to have serious opposition only if there is widespread dissatisfaction with his performance in the legal community. But there are exceptions to all these rules. Sometimes a judgeship becomes vacant at the end of a term, and the successor is initially elected instead of appointed; that may occur because the expiration of the judge's term coincides with his personal plans, or it may occur because he does not want to give the Governor an opportunity to select his replacement. The system allows him that choice. Sometimes an incumbent judge is challenged. Few incumbents are defeated, but the humbling effect of having to undergo frequent elections should not be underestimated. So why should the state abandon a system that has served it for over 100 years?

To find that answer, one must first understand the current system. In practice, it is an appointive system. The Commission's proposal would make the law conform to that practice. The Commission believes that North Carolina has been fortunate in having judges of high quality and integrity. The Commission also believes that a major factor in attracting good judges has been the relative security that attaches once one has been appointed or elected for the first time. That security is important for two reasons. First, most people (including judges) want job security so that their family and other financial obligations can be met, and a judgeship that is so insecure that faithful performance in the job will have little effect on one's retention will not interest most of the competent, public-spirited lawyers who should be seeking the job. Second, and more importantly, politically insecure judges are not well equipped to make legally correct, but politically unpopular decisions. But that security is fast evaporating, as the state begins to have contested elections for judgeships on a regular basis, and has two political parties capable of winning elections in a given year.

North Carolina's judges are elected in partisan elections. Most judicial elections in this country are either nonpartisan or retention elections. Nonetheless, North Carolina's partisan system of electing judges has, for

nearly all of this century, resulted in a system in which an incumbent judge can feel secure in his job. That security resulted from two related political facts. Until 1974, all Governors in this century were Democrats. Until 1988, no Republican judicial candidate in this century had won election in a statewide election. The result was that Democratic governors tended to appoint judges from their own party, and those judges then used the solid Democratic majority in statewide elections to retain their jobs without serious opposition. District court judges do not run in statewide elections. Since 1966, they have run only in their districts. In districts in which both political parties are strong, there have been several partisan sweeps in which all incumbents of one party have been voted out of office. Maintaining stability and continuity in those districts is difficult. The Commission believes the experience of the district court will be repeated in the statewide judicial elections of the future. Two more facts: (1) Republicans have won three of the last five governor's races; and (2) In 1988, two of three incumbent Republican judges won election in statewide judicial elections. These political changes have many implications for the political life of North Carolina, but the Commission has concerned itself with their effects on judicial elections.

What are those effects? The Commission believes that North Carolina can look forward to expensive, contested elections for judgeships in all parts of the state and at all levels of the judiciary. The fact that both major political parties had successful statewide judicial candidates in the 1988 election virtually guarantees that result for superior and appellate courts. That has been the rule for years in many district court elections. There are two basic problems with that scenario. First, the skills needed to serve effectively as a judge are not the same as those needed to be successful on the campaign trail. To be successful in partisan elections, one needs to be partisan and responsive to those who can help him get votes. To be successful as a judge, one must be nonpartisan and impartial. Increasingly, to be successful as a candidate one must have access to money. The people most interested in giving money to judges' campaigns are attorneys and others who seek relief through the courts. As elections become more expensive, the successful candidate's ability to remain impartial after an election will be tested as those judges whose campaigns have received money from litigants and attorneys must then decide cases involving those people. Even if judges can

remain impartial, the appearance is that they cannot. Texas has this problem right now, as elections for trial and appellate courts there have grown so expensive and bitter that significant constituencies in that state doubt the ability of their courts to deliver justice impartially. No one on the Commission believes that North Carolina will find itself in the same situation as Texas, but the trend in North Carolina is disturbingly similar, and the result may be a situation that differs more in degree than in kind.

Elections are essential to a democratic society. But few people would want the pharmacists filling their prescriptions to be chosen by election--Or the doctors operating on them, or the lawyers drafting their wills. They do want governors, legislatures, city councils, and school boards chosen by elections. What is the difference? Those political offices are filled by election because the officials chosen represent the voters of a particular district in making policy choices about how governmental services should be provided and what the limits on private activity should be. To make elections meaningful, voters expect candidates to discuss those policy choices. If elected, voters then expect the official to fulfill his campaign promises. Applying this process to judges causes problems. They provide the essential function of applying laws made by others to the facts of particular cases. Even most of the work of appellate judges involves the review of trial courts work. The law-making function of appellate courts mostly involves filling in gaps left by other law makers. The skills most useful in this function are legal skills. Major policy choices are almost always left to legislatures and executive officials. In short, the judge's job is more like the lawyer's or doctor's than the legislator's. And that is true for judges at all levels of the judiciary, from the district court to the Supreme Court.

Given their function, it is not surprising that judges are not allowed by their official code of conduct to discuss issues. Thus, the people who are least likely to be known by the public at large, judicial candidates, are thus prohibited from doing the one thing that might make them better known--discuss issues. To do otherwise, however, casts into doubt the ability of the judge to be impartial when the issues discussed come before him. And nothing is so fundamental to a court's integrity as impartiality. So judges campaign in anonymity seeking money to advertise their qualifications (but nothing more), and hoping that the inflation rate, the probability of a gas tax, and the

prospect of new initiatives with the Soviet Union will not cause their party to be at a substantial disadvantage in the election. If the judge has an opponent who does campaign on issues (such as the death penalty), then the judge has to decide whether to respond and himself engage in an ethical violation or risk losing the election by leaving the charge unanswered. If the charge is made by a surrogate of his opponent instead, there is often no effective, ethical response.

The Commission believes that judicial candidates should not be forced to participate in elections conducted in this demilitarized zone of politics. After consideration of all the advantages and disadvantages of elections, it has concluded that elections are not the best way to select judges at any level of the judiciary. It reaches this conclusion with the knowledge that moving away from elections appears to be a radical change for North Carolina. It does not make this recommendation lightly. Nonetheless, the risk of losing the impartiality that is central to an effective judiciary, coupled with the risk of the diminishment of quality of those willing to be judges because of the instability of the job makes the Commission confident that it has reached the correct result.

Eliminating elections will "take the vote away from the people" if **those same** people vote to give it up, and only if they do so. No change of the magnitude recommended here can be done without a constitutional amendment, and that will require a vote of the people. If they decide that they do not want to change, no change will take place. The Commission members have different opinions on how the public feels about voting for judges. In the absence of an opinion poll, such data is necessarily anecdotal. The Commission believes that the time has come to take the most meaningful poll of all--a constitutional referendum--on this issue.

The advantages of appointing judges.

If judges should not be elected in partisan elections, how should they be selected? In answering that question, the Commission considered many different kinds of selection systems. It heard testimony from speakers familiar with nonpartisan elections, merit selection appointments with retention elections, and appointments subject to legislative confirmation. It heard from a national expert on judicial selection, and from several instate speakers who have ideas for reforming the system. All systems have faults.

They all seek to balance two competing values--accountability to prevent judicial tyranny and and independence to allow a judge to make unpopular decisions. All reach a somewhat different balance. Ultimately, the issue is who can select the best judge from among those willing to be considered for the job. A secondary issue is whether the system maximizes the available pool from which the selection can be made. The Commission believes that the appropriate balance can best be maintained by appointing judges, subject to legislative confirmation and reconfirmation.

Gubernatorial appointment is, on its face, a political process. The Commission recognizes that political factors will be involved in judicial selection if its recommendation is adopted. But it found no system that did not involve political considerations.

Merit selection systems are criticized for shifting the politics of the selection process from the governor's office to a commission that meets in private. Their use of retention elections causes judges to worry about the rise of single issue interest groups who will campaign against them. They would generally prefer to campaign against an opponent if there is going to be an election. It is difficult to defend oneself against the charge that the replacement judge will be tougher on crime if one does not know who the replacement will be. That can happen in retention elections.

Election systems, whether partisan or nonpartisan, mostly ratify the governor's appointments to mid-term vacancies. The problems with partisan elections are discussed earlier in this report. Nonpartisan elections may eliminate the partisan voting. If they do, they still do not provide the voter any information with which to make a rational choice about how to vote. So the voter has little knowledge and no party principles to guide him, and the candidates are separated from the financial support that can come from the party machinery, which is the one source of money that does not directly involve the receipt of contributions from interested litigants and attorneys. In addition, the candidates are still forbidden by the Code of Judicial Conduct from doing more than telling their qualifications for the job.

The question the Commission faced was not how to eliminate politics from judicial selection, but how to control and channel it to obtain the best result. The Commission concluded that the best solution is to place the power

to select in the Governor, who is elected by the people, and to give the power to confirm in the legislature, which is also elected. In this matter, as is true of the budget, the selection of the state school board and the utilities commission, and numerous other issues, the choice of who the state's judges will be is left to duly elected officials. The manner in which they exercise that choice will be one factor in determining whether they will remain on good terms with their constituents. The Commission believes that the Governor and General Assembly will act in good faith to seek and appoint the best candidates for judgeships. If they don't, they must answer to the people. It is a slightly different form of democracy from the current system, but it is still democracy. It works well in other states.

One difference in an appointment system is that it places complete control of selection in the hands of the Governor. In theory (and occasionally in fact) under an elective system the initial selection is made by the electorate. In addition, the threat of an election is a good antidote to judicial arrogance. However, the number of times that the electorate actually chooses the initial occupant of a judgeship is sufficiently small that the Commission believes that giving up that opportunity is a reasonable price to pay to get the benefits of the system it recommends. First, all appointees will receive a significant review under the legislative confirmation process, and under the current system an appointment is reviewed by no one. Second, the reconfirmation process should be at least as effective in arrogance prevention as the threat of an electoral opponent.

The Commission also recognizes that the decision to reconfirm is as important as the decision to appoint. How judges have done on the bench is the best test of how they will do in the future. The reconfirmation process should focus on that measure. The reelection process today focuses on that measure in only the rarest of cases. In most cases no one opposes the judge, and he is automatically reelected. In contested cases involving incumbents the determining factor in most elections is the relative strength of the political party in the area in which the election is held. Only rarely is the election determined by the incumbent's perceived poor performance or the challenger's promise of improved performance. The Commission believes that its recommended reconfirmation process will provide a meaningful decision in all cases.

The Governor is not involved in the reconfirmation process. If politics will have some role in selection, as it inevitably does, it should have a much less significant role in retention decisions. The Commission thinks it is crucial that partisan swings in the Governor's office not affect the ability of sitting judges to retain their seats. Anything short of that result will severely impair the ability of any Governor to attract qualified candidates for a vacancy.

If the Governor should not be involved, who should? The Commission reviewed several alternatives, including retention elections, reappointment by the Chief Justice, legislative reconfirmation, and reconfirmation by a special commission created solely for that purpose. It decided on a mixed system, in which a nonpartisan commission reviews the judge's performance, and makes a recommendation to the General Assembly. The General Assembly must then decide whether to reconfirm the judge.

This initial review is a critical part of the Commission's recommendation. It serves two equally important functions. First, it provides a measure of security to the sitting judge that his retention will be dealt with in a nonpolitical and fair way. Without that sense of confidence in the process, good lawyers will not submit their names for consideration to be appointed as judge in the numbers necessary to insure a quality judiciary. Second, the process must be able to get rid of judges who through lack of judicial knowledge or temperment are unable to conduct themselves in the manner expected of a judge. The people who must spend time in court deserve better, and in the long run, the judge who is not performing at a minimum level is better served by the early termination of a career for which he is not well suited.

These will be difficult decisions. To make them, the Commission recommends the use of a body that has already developed a distinguished record of making similarly difficult decisions, the Judicial Standards Commission. That Commission already must investigate complaints lodged against judges by citizens. It has on some occasions taken the difficult step of recommending that the Supreme Court remove sitting judges. It is accustomed to dealing with sensitive matters affecting a judge's career, and has developed the confidence of the judges and the public in the manner in which it has undertaken its duties. The review of sitting judges' fitness for

reconfirmation would involve an increase in duties, and an expansion of roles for the Standards Commission. But the Judicial Selection Study Commission believes that the Standards Commission is well suited to perform this additional mission.

The Judicial Standards Commission's role is so important that the Judicial Selection Study Commission recommends that the results of the review be given extraordinary weight in the confirmation process. First, it recommends that the results of the review require an extraordinary majority of two third of each house to be reversed. Second, it recommends that failure of the General Assembly to consider the Judicial Standard Commission's recommendation be considered an approval of the recommendation. The Judicial Selection Study Commission recognizes the extraordinary nature of this recommendation, but it believes that the balance required to assure a reasonable amount of security to sitting judges while protecting the public from incompetent judges is so difficult to achieve that a public, political body like the General Assembly cannot do it alone.

The Commission's recommendation.

To implement the recommendations contained in this report, the Commission urges the enactment of the attached two bills by the General Assembly in 1989. The first would amend the North Carolina Constitution to provide for appointment of judges by the Governor, subject to confirmation by the General Assembly. It would provide for reconfirmation by the General Assembly, by whatever method it establishes by statute. The terms would be four years initially, with subsequent terms of eight years for reconfirmed judges. If enacted by the General Assembly, the people would vote on the proposed amendments in November of 1989. The first judges would be appointed in 1990, and the first legislative confirmation proceedings would likely take place in 1991.

The second proposal contains implementing legislation to be effective only if the constitutional amendment is approved by the people. It implements the recommendations discussed in this report, and includes provisions establishing timetables, as well as some other procedural details not discussed earlier. The most significant ones include:

1. The office of Chief Justice is a separate office from that of Associate Justice, and is subject to the same terms and appointment procedures as all other judgeships. All other judges with administrative responsibility (Chief Judge, Court of Appeals; Senior Resident Superior Court Judge; and Chief District Court Judge) are designated by the Chief Justice from among those already appointed to the judiciary at that level.
2. All terms will begin on September 1 in the year after a judge is confirmed or reconfirmed.
3. A nominee of the Governor may begin service as soon as he is nominated, but if he is rejected, his eligibility to serve is terminated on the day the rejection becomes effective. If a sitting judge is not reconfirmed by the General Assembly, he continues in office until the expiration of his term, but may not hold over after that date.
4. The Judicial Standards Commission, in conducting its review of judges seeking reconfirmation, must conduct a public hearing on each judge.
5. Judges and justices in office when the legislation becomes effective will not be subject to the appointment process, but will be subject to the reconfirmation process at the end of their terms. All terms of sitting judges and justices will have to be extended one time, to place them on a September starting time instead of the January or December times now used to begin terms. Judges and justices whose terms expire before they have four years of service will also have their terms extended long enough to give them four years of service before they are considered for reconfirmation.
6. No special superior court judges are provided for in this proposal.
7. To be eligible for a judgeship, a candidate must be an attorney licensed to practice in North Carolina, a registered voter, and for trial courts, a resident of the district to which the judgeship he is seeking is assigned. For trial courts, a durational residency requirement of six months is established. The district lines used now are not affected by the proposal.
8. Provisions requiring local district bars to submit nominations to the Governor for filling mid-term district court vacancies are repealed, as are provisions authorizing the formal establishment of specialized judgeships by election.

Conclusion.

The Commission believes that the bills it recommends are essential to the maintenance of an independent and impartial judiciary. It urges their favorable consideration by this General Assembly. The state is fortunate to have a judiciary of high quality, and the Commission wants to keep it that way, and improve that quality if possible. The prospects for doing that with the present electoral system are not good; the consequences of inaction could be severe. Implementation of these recommendations can avoid those consequences, but the necessity of voter and voting rights approval of changes of this magnitude makes the process a lengthy one. There is no time to lose.

MINORITY REPORT

This minority report is submitted by the following Commission members: William Smith, Donald Dawkins, George Cunningham, and H. M. Michaux.

Once again, change for the sake of change rears its head draped in the mantle of "REFORM".

Well-intentioned people whose judgment, experience and wisdom we respect argue that the judicial selection process needs to be changed, but the argument and the proposed changes are all based on theory and perceived subjective symptoms. Some suggest variations of the so-called Missouri Plan with a committee making recommendations to the Governor, some would add a confirmation process by one or both houses of the legislature, some would provide for non-partisan elections, some would provide for a "retention" vote after various numbers of years, and the Chief Justice of North Carolina prefers an appointment for 15, 20 or 25 years by the Governor with approval of the legislative branch without a prospect of re-appointment or any retention election.

The Judicial Selection Study Committee has heard from judges from several different states which have selection processes differing widely from each other and from North Carolina. We have heard from our own Chief Justice, James G. Exum, Jr. Not one speaker has been critical of the quality of the North Carolina judiciary. Justice Exum says our judges are "generally able" and that our judiciary is "stable". He has urged our committee to devise a system of selection that we think will be acceptable to the people and will best enable North Carolina to attract, select and retain a stable judiciary, composed of learned, impartial, strong, independent and career-minded judges who, as a whole, are broadly representative of the State's people in terms of their race, sex and politics.

We suggest that the system we now have does just that except for being representative of "race, sex and politics". It is suggested that we need that representation so that the "perception" of fairness and impartiality will be increased. With respect to race and sex, it should be noted that only within

the last decade in North Carolina have blacks and females been graduating from law schools in sufficient numbers to form any reasonable pool from which to select judges. When recent female and black graduates have secured the maturity and experience, the wisdom and judicial temperament as a group to qualify for the bench, more of them will be elected.

Politically, Republicans have arrived, sufficient in numbers to win elections in about the same time frame. We are much more concerned, in any event, with the reality of fairness and impartiality than we are with the perception of it. We believe in the State motto of "To be, rather than to seem".

The most salient argument for doing away with all elections of judges, including retention elections, is the cost of campaigning, with major amounts of money coming from lawyers or special interest groups. In order to avoid that necessity, a system of gubernatorial, or other, appointment for life or some very long term without possibility of re-appointment is the only possibility. We believe that that system, which is only used in the Federal court, does not by any objective criteria produce any more "stable judiciary, composed of learned, impartial, strong, independent and career-minded judges" than the system we now have. Some would argue that it may produce such "independence" as borders on arrogance in the Federal system.

The North Carolina Judicial Conference is, we are told, split on the issue and while we know of no precise count, our perception is, from talking to many of them, that the majority favor the present system of partisan election. We know only a few Superior Court judges who have expressed a desire for some form of "merit selection", though of course there may be more.

We know of no public demand, outcry, suggestion, or even interest in changing the system.

Every judge who has spoken to the committee, from other states that have various non-partisan, non-elective systems which differ from ours, has outlined problems with their various systems which seem to us to be either non-existent in North Carolina or of far more import than here.

In states with appointive systems and retention elections, a judge or justice standing for retention is usually retained without much, if any, public awareness of whether he or she is "good, bad or indifferent" because

most of the time no one and no organization has any incentive to spend the money and time to educate the public. If, as happened in 1986 in California, some special interest groups do decide to get rid of a judge, the judge must then meet their expenditures in campaigns if he wishes to stay in office. He is then right back in the fund-raising business exactly like he would be in a contested partisan or non-partisan election or retention election with opposition.

The Judicial Selection Committee Chairman asked at one of our meetings for a show of hands of those interested in serving on a subcommittee to draft recommendations for a Missouri-type "merit selection" plan. Not one hand was raised. He asked for a show of hands of those who would like to serve on a subcommittee to draft recommendations for a non-partisan election system. Not one hand was raised. He then asked for a show of hands of those who would like to serve on a subcommittee to draft recommendations to keep the present partisan election system with some changes and secured enough hands to appoint that subcommittee. He then went through the same process and secured enough raised hands to appoint a subcommittee to draft recommendations for a "purely appointive" system. It would seem that the members of the committee then present were not at all interested in a so-called Missouri merit selection system or abolishing the partisan election of judges, and we believe that accurately reflects the North Carolina General Assembly and the people of North Carolina.

It has been suggested that we might consider non-partisan election of judges to take the "politics" out of the process. No one can seriously believe that a gubernatorial appointment, with or without legislative approval, with or without a committee recommendation, takes the process out of politics. All it does is compress the political power into the hands of the Governor, the legislature, the committee or some combination thereof. The political pressures would be almost unbearable as contrasted with the diffusion of such power among some group of voters, either district or division with respect to Superior Court judges or the whole state with respect to Appellate Court judges.

Let us back off for a moment from the narrow focus on judicial selection and consider for a moment the wider implication of such suggestion. We believe in the two party system as the only orderly, effective method of

governing the country. Italy, with 27 different political parties, has a government fall and new elections every few months. On a national and state election basis, the vast majority of voters do not personally know any of the candidates. Only by party affiliation can most voters know a candidate. If we reach the point of individuals running against individuals, it seems to us that chaos inevitably follows as in Italy. The two party system needs to be strengthened - not weakened - as the proponents of non-partisan elections advocate. We have in North Carolina many non-partisan elections of city council and other offices, and we challenge anyone to prove by any objective criteria, that they have resulted in better candidates or better governance.

There is no objective evidence that North Carolina needs any change in the present system of partisan election of judges. It is a totally subjective and theoretical claim that change is needed. However, a legitimate claim is made that statewide election of Superior Court judges and Appellate Court judges results in voters casting their ballots for people about whom they know little. That is true because of the restrictions placed on judicial candidates. If the restrictions are to continue, and we see no evidence of any popular support for a change, it might be wise to consider electing Superior Court judges from either their district or even the division in which they serve. That way people would know more about them as individuals. It might also cause more challenges from people interested in becoming a judge. The Appellate judges and justices should continue to be elected on a statewide partisan ballot because that system has served us so well in the past. We are aware of no appreciable criticism of the quality of our Appellate judges and we believe that campaigning across the State every few years makes better judges of them. It keeps them in touch with the reality of day-to-day existence in the State, broadens their concepts of the problems ordinary people face and dilutes, to some extent, the effect of the cloistered ivory tower syndrome. It is argued of course that Appellate Court judges do not make law and do not make policy, so they have no need for such broad contact with the "unwashed" public. That, of course, is hogwash. All of our common law is judge made. Construction of the State and Federal constitutions is a combination of picking out those precedents which support a particular theory or result and mixing them into the individual judge's predisposition for an opinion which a majority of the Court can agree on.

It is argued that no state which has changed from a partisan election of judges to some other system has returned to the previous partisan election method. That is precisely why North Carolina should not hastily scrap a system which practically all the "experts" agree has worked so well so long for us. Notwithstanding the scandals in Missouri, California, Ohio, Kentucky, Montana and other states which changed from partisan to other forms of selection, it takes too much time for the pendulum to swing, for the public to be aroused, to admit error and go back to the old way. With more than thirty other states experimenting with thirty different methods of selecting judges, it seems to us that we have plenty of time to evaluate their methods and see if we can find even one which produces, by some objective criteria, a better method than we now have.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

D

SENATE DRS9516-LB53(2.2)

Short Title: Appointed Judges.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO
3 PROVIDE FOR APPOINTMENT OF JUSTICES AND JUDGES BY THE
4 GOVERNOR, WITH THE ADVICE AND CONSENT OF THE GENERAL
5 ASSEMBLY, AND TO AUTHORIZE THE GENERAL ASSEMBLY TO
6 PROVIDE FOR A PROCEDURE TO DETERMINE IF JUDGES SO
7 APPOINTED SHOULD BE RETAINED IN OFFICE.

8 The General Assembly of North Carolina enacts:

9 Section 1. Section 6(1) of Article IV of the North Carolina Constitution
10 reads as rewritten:

11 "(1) Membership. The Supreme Court shall consist of a Chief Justice and six
12 Associate Justices, but the General Assembly may increase the number of Associate
13 Justices to not more than eight. The Governor shall nominate, and with the advice
14 and consent of a majority of the Senate and of the House of Representatives, appoint
15 the Chief Justice and the Associate Justices as provided by law. Justices appointed
16 shall serve an initial term as provided by this Article and shall be eligible for
17 subsequent terms pursuant to procedures and in a manner as shall be established by
18 the General Assembly. In the event the Chief Justice is unable, on account of
19 absence or temporary incapacity, to perform any of the duties placed upon him, the
20 senior Associate Justice available may discharge these duties."

1 Sec. 2. Section 7 of Article IV of the North Carolina Constitution reads
2 as rewritten:

3 "Sec. 7. Court of Appeals.

4 The structure, organization, and composition of the Court of Appeals shall be
5 determined by the General Assembly. The Governor shall nominate, and with the
6 advice and consent of a majority of the Senate and of the House of Representatives,
7 appoint the Judges of the Court of Appeals as provided by law. Judges appointed
8 shall serve an initial term as provided in this Article and shall be eligible for
9 subsequent terms pursuant to procedures and in a manner as shall be established by
10 the General Assembly. The Court shall have not less than five members, and may be
11 authorized to sit in divisions, or other than en banc. Sessions of the Court shall be
12 held at such times and places as the General Assembly may prescribe."

13 Sec. 3. Section 9(1) of Article IV of the North Carolina Constitution
14 reads as rewritten:

15 "(1) Superior Court districts. The General Assembly shall, from time to time,
16 divide the State into a convenient number of Superior Court judicial districts and
17 shall provide for the ~~election~~ appointment of one or more Superior Court Judges for
18 each district. The Governor shall nominate, and with the advice and consent of a
19 majority of the Senate and of the House of Representatives, appoint the regular
20 Superior Court Judges as provided by law. Judges appointed shall serve an initial
21 term as provided in this Article and shall be eligible for subsequent terms pursuant to
22 procedures and in a manner as shall be established by the General Assembly. Each
23 regular Superior Court Judge shall reside in the district for which he is ~~elected~~.
24 appointed. The General Assembly may provide by general law for the selection or
25 appointment of special or emergency Superior Court Judges not selected for a
26 particular judicial district."

27 Sec. 4. Section 10 of Article IV of the North Carolina Constitution reads
28 as rewritten:

29 "Sec. 10. District Courts.

30 The General Assembly shall, from time to time, divide the State into a convenient
31 number of local court districts and shall prescribe where the District Courts shall sit,
32 but a District Court must sit in at least one place in each county. District Judges
33 shall be ~~elected~~ appointed for each district ~~for a term of four years, in a manner~~
34 ~~prescribed by law.~~ The Governor shall nominate, and with the advice and consent of
35 a majority of the Senate and of the House of Representatives, appoint District Judges

1 ~~as provided by law. Judges appointed shall serve an initial term as provided in this~~
2 ~~Article and shall be eligible for subsequent terms pursuant to procedures and in a~~
3 ~~manner as shall be established by the General Assembly. When more than one~~
4 ~~District Judge is authorized and elected~~ appointed ~~for a district, the Chief Justice of~~
5 ~~the Supreme Court shall designate one of the judges as Chief District Judge. Every~~
6 ~~District Judge shall reside in the district for which he is elected.~~ appointed. ~~For each~~
7 ~~county, the senior regular resident Judge of the Superior Court serving the county~~
8 ~~shall appoint for a term of two years, from nominations submitted by the Clerk of the~~
9 ~~Superior Court of the county, one or more Magistrates who shall be officers of the~~
10 ~~District Court. The number of District Judges and Magistrates shall, from time to~~
11 ~~time, be determined by the General Assembly. Vacancies in the office of District~~
12 ~~Judge shall be filled for the unexpired term in a manner prescribed by law.~~
13 ~~Vacancies in the office of Magistrate shall be filled for the unexpired term in the~~
14 ~~manner provided for original appointment to the office."~~

15 Sec. 5. Section 16 of Article IV of the North Carolina Constitution reads
16 as rewritten:

17 "Sec. 16. Terms of office ~~and election~~ of Justices of the Supreme Court, Judges of
18 the Court of Appeals, ~~and Judges of the Superior Court.~~ Court, and Judges of the
19 District Court.

20 ~~Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges~~
21 ~~of the Superior Court shall be elected by the qualified voters and shall hold office for~~
22 ~~terms of eight years and until their successors are elected and qualified. Justices of~~
23 ~~the Supreme Court and Judges of the Court of Appeals shall be elected by the~~
24 ~~qualified voters of the State. Regular Judges of the Superior Court may be elected by~~
25 ~~the qualified voters of the State or by the voters of their respective districts, as the~~
26 ~~General Assembly may prescribe.~~

27 The initial term of office for each person holding the office of Chief Justice of the
28 Supreme Court, Associate Justice of the Supreme Court, Judge of the Court of
29 Appeals, regular Judge of the Superior Court, and Judge of the District Court shall
30 be four years, and each subsequent term for that person in that office shall be eigh
31 years."

32 Sec. 6. Section 19 of Article IV of the North Carolina Constitution reads
33 as rewritten:

34 "Sec. 19. Vacancies.

1 ~~(1) Unless otherwise provided in this Article, all vacancies occurring in the offices~~
2 ~~provided for by this Article~~ Vacancies in the office of district attorney shall be filled
3 by appointment of the Governor, and the appointees shall hold their places until the
4 next election for members of the General Assembly that is held more than 60 days
5 after the vacancy occurs, when elections shall be held to fill the offices. When the
6 unexpired term of any ~~of the offices named in this Article of the Constitution in~~
7 ~~which a vacancy has occurred, and in which it is herein provided that the Governor~~
8 ~~shall fill the vacancy,~~ district attorney expires on the first day of January succeeding
9 the next election for members of the General Assembly, the Governor shall appoint
10 to fill that vacancy for the unexpired term of the office. If any person elected or
11 appointed to ~~any of these offices~~ the office of district attorney or clerk of superior
12 court shall fail to qualify, the office shall be appointed to, held and filled as provided
13 in case of vacancies occurring therein. All incumbents of these offices shall hold
14 until their successors are qualified.

15 (2) Vacancies in the office of Chief Justice, Associate Justice, Judge of the Court of
16 Appeals, Superior Court Judge, and District Judge may be filled by interim
17 appointment of the Governor, subject to such limitation on the duration of the
18 interim appointments as the General Assembly shall provide by general law. The
19 General Assembly may by general law specify provisions contrary to those in Article
20 VI, Section 10 to be applicable to Justices and Judges."

21 Sec. 7. Article IV of the North Carolina Constitution is amended by
22 adding a new section to read:

23 "Sec. 23. Transition to appointment system.

24 Justices and Judges holding office on the effective date of amendments to this
25 Article deleting provisions requiring elections for Justices and Judges, and inserting in
26 their place provisions requiring appointment of Justices and Judges, shall continue in
27 office until the expiration of their terms. Those Justices and Judges, to remain in
28 office beyond the expiration of their terms, shall be subject to the reconfirmation or
29 retention procedures established by the General Assembly. The General Assembly
30 may also provide by the general law for the extension of terms of Justices and Judges
31 if necessary to an orderly transition to an appointive system of initial selection."

32 Sec. 8. The amendments set out in Sections 1 through 7 of this act shall
33 be submitted to the qualified voters of the State at a special election to be held on
34 November 7, 1989, which election shall be conducted under the laws then governing

1 elections in the State. At that election, each qualified voter desiring to vote shall be
2 provided a ballot on which shall be printed the following:

3 [] FOR Constitutional amendments to provide for appointment of
4 judges by the Governor, subject to the advice and consent of the
5 General Assembly for initial terms of four years, followed by
6 subsequent terms of eight years pursuant to a reconfirmation
7 procedure to be determined by the General Assembly.

8 [] AGAINST Constitutional amendments to provide for appointment
9 of judges by the Governor, subject to the advice and consent of the
10 General Assembly for initial terms of four years, followed by
11 subsequent terms of eight years pursuant to a reconfirmation
12 procedure to be determined by the General Assembly.

13 Those qualified voters favoring the amendments set out in Sections 1 through 7 of
14 this act shall vote by making an X or check mark in the square beside the statement
15 beginning "FOR", and those qualified voters opposed to that amendment shall vote
16 by marking an X or check mark in the square beside the statement beginning
17 "AGAINST".

18 Notwithstanding the foregoing provisions of this section, voting machines may be
19 used in accordance with rules and regulations prescribed by the State Board of
20 Elections.

21 Sec. 9. If a majority of votes cast thereon are in favor of the amendments
22 set out in Sections 1 through 7 of this act, the State Board of Elections shall certify
23 the amendments to the Secretary of State, who shall enroll the amendments so
24 certified among the permanent records of his office, and the amendments shall
25 become effective January 15, 1990.

26 Sec. 10. This act is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

D

SENATE DRS4506-LB(1.11)

Short Title: Appointive Judges Statute.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT TO PROVIDE FOR APPOINTMENT OF JUDGES BY THE
3 GOVERNOR SUBJECT TO THE ADVICE AND CONSENT OF THE
4 GENERAL ASSEMBLY, TO PROVIDE FOR THE RECONFIRMATION OF
5 SITTING JUDGES BY THE GENERAL ASSEMBLY AND TO PROVIDE FOR
6 TRANSITIONAL AND OTHER PROVISIONS NECESSARY TO MOVE FROM
7 AN ELECTIVE TO AN APPOINTIVE SYSTEM.

8 The General Assembly of North Carolina enacts:

9 Section 1. Chapter 7A of the General Statutes is amended by adding a
10 new Article to read:

11 "Article 1A.

12 "Appointment, Confirmation and Reconfirmation of Justices and Judges.

13 "**§ 7A-5. Appointment of Justices and Judges by Governor and confirmation by**
14 **General Assembly.**

15 (a) When a new judgeship on the Supreme Court, Court of Appeals, Superior
16 Court or District Court is created, the Governor shall within 90 days after the act
17 creating the judgeship becomes law nominate a person to serve in the judgeship.
18 Unless otherwise provided, the nominee shall be subject to confirmation by the
19 Senate and the House of Representatives in the first regular session held in an odd-
20 numbered year convening after the judgeship is created.

(b) When a vacancy occurs in the office of Chief Justice of the Supreme Court, Associate Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, and Judge of the District Court, the Governor shall nominate a person to fill the vacancy. If the vacancy occurs because the holder of the office indicates that he will not seek reconfirmation at the end of his term, the Governor must submit his nomination to the General Assembly by February 1 of the year after that intention is made known. If the vacancy occurs for any other reason, the Governor must submit his nomination to the General Assembly no later than 90 days after the vacancy is created.

(c) Nominees are subject to confirmation by the Senate and by the House of Representatives by majority vote of each house. If the nominee is filling a vacancy to be created at the end of a term and his nomination is the first such nomination for that office, the nomination is subject to confirmation during the regular session held in an odd-numbered year after the holder of the office indicates his intention not to seek reconfirmation. All other nominations shall be subject to confirmation during the first such session conducted after the nomination is submitted unless it is submitted during such a session but after April 1. Nominations submitted during such a session and after April 1 may be considered for confirmation in that session by the General Assembly, but if the nomination is not considered, it shall be subject to confirmation at the next regular session held in an odd-numbered year. Failure of the nomination to receive a majority vote in either house during the session in which the nomination is submitted constitutes a failure to confirm and creates a vacancy in the office to be filled as provided in this section, unless the nomination is submitted after April 1 during such a session and no vote is taken in either house. A nominee confirmed by both the Senate and House of Representatives shall be appointed by the Governor for an initial term of four years, to begin on September 1 in the year in which he is confirmed. For the purpose of this subsection, a session ends when it adjourns or recesses for more than 30 days, or adjourns **sine die**, whichever comes first.

(d) In addition to any other lawful requirement for service as a Justice or Judge, a nominee, to be eligible to be nominated for any judgeship shall be a registered voter in this State, and if the judgeship requires residence in a district, shall have been a resident for the six months immediately preceding the date on which he is nominated.

1 (e) The Governor, in making no minations, shall make reasonable efforts to ensure
2 that his nominees are broadly representative of the people of this State.

3 **"§ 7A-6. Service by nominee pending confirmation.**

4 A nominee for a vacancy for a judgeship listed in G.S. 7A-5(b) may begin service
5 in the office upon being nominated if there is an actual vacancy in the office. If the
6 nominee is not confirmed, as provided in G.S. 7A-5(c), his eligibility to serve is
7 terminated on the date of any negative vote, or if the confirmation fails because of a
8 failure to vote in one or both houses, on the adjournment date of the session. The
9 provisions of Article VI, Section 10 of the North Carolina Constitution are not
10 applicable to nominees who are not confirmed by the General Assembly. For the
11 purpose of this section, the adjournment date is the date the session adjourns or
12 recesses for more than 30 days, or adjourns *sine die*, whichever comes first.

13 **"§ 7A-7. Reconfirmation procedure.**

14 (a) Any Justice or Judge, to be eligible to be reconfirmed, shall by November 1 in
15 the year immediately preceding the year in which his term expires, file a written
16 declaration of his intent to seek reconfirmation. The declaration shall be filed with
17 the Governor. The Governor shall promptly notify the General Assembly and the
18 Judicial Standards Commission of his receipt of the declaration. Failure to file the
19 declaration in a timely manner results in the creation of a vacancy in the office at the
20 expiration of the term. A Justice or Judge may indicate in writing to the Governor
21 that he does not intend to seek reconfirmation, and the filing of that intention creates
22 a vacancy in the office at the expiration of the term, unless the Justice or Judge
23 leaves office at an earlier date.

24 (b) The Judicial Standards Commission, upon receipt of a Justice's or Judge's
25 written declaration of his intent to seek confirmation, shall investigate the Judge's
26 performance as a Justice or Judge to determine if it should recommend that he be
27 reconfirmed. The Commission shall conduct a public hearing to allow comment
28 from interested persons on the Justice's or Judge's fitness to continue in office.
29 Documents prepared or received in the course of the investigation are confidential
30 and not subject to public inspection without the consent of the Justice or Judge,
31 notwithstanding the provisions of Chapter 132 of the General Statutes. The
32 investigation shall include an evaluation of the Justice's or Judge's ethical conduct,
33 his knowledge of and application of the law, his management of the courts over
34 which he has presided, his work habits, his health, his judicial demeanor, and any
35 other matter that the Commission determines to be relevant to its inquiry. The Judge

1 shall be given an opportunity to present to the Commission any information he
2 determines to be appropriate. The Commission's recommendation shall be by
3 majority vote.

4 (c) If a member of the Commission is seeking to be reconfirmed, he shall recuse
5 himself from any deliberation or investigation related to his reconfirmation.

6 (d) No later than 30 days after the convening of the General Assembly in the year
7 following the filing of a Justice's or Judge's intent to seek reconfirmation, the
8 commission shall report to the General Assembly as to whether it recommends that
9 the Justice or Judge be reconfirmed. A two-thirds majority in both the Senate and
10 the House of Representatives shall be necessary to reject the recommendation of the
11 Commission. If either house fails to vote on the report of the Commission during the
12 session in which it is submitted, the recommendation of the Commission shall be
13 deemed to have been approved by the General Assembly. For the purpose of this
14 subsection, a session ends when it adjourns or recesses for more than 30 days, or
15 adjourns **sine die**, whichever comes first.

16 (e) A Justice or Judge reconfirmed by the General Assembly serves an eight-year
17 term, to begin at the expiration of the term he is serving at the time of
18 reconfirmation. If the General Assembly does not reconfirm a Justice or Judge,
19 either by a negative vote or by failing to vote on a negative recommendation of the
20 Commission, a vacancy in that office is created at the expiration of the term. The
21 provisions of Article VI, Section 10 of the North Carolina Constitution are not
22 applicable to Justices or Judges who are not reconfirmed by the General Assembly.

23 **"§ 7A-8. Governor to issue commissions to Justices and Judges.**

24 Every person duly appointed by the Governor as a Justice or Judge, and every
25 Justice or Judge duly reconfirmed by the General Assembly shall procure from the
26 Governor a commission attesting that fact, which the Governor shall issue upon
27 receipt of a certification by the principal clerks of the Senate and House of
28 Representatives that the person has been confirmed or reconfirmed by the house in
29 which the clerk serves. The principal clerk of the Senate and the principal clerk of
30 the House of Representatives shall promptly certify the results to the Governor of any
31 judicial confirmation and reconfirmation votes taken in their respective houses. The
32 Secretary of State shall inform the Governor whenever the General Assembly
33 adjourns or recesses for more than 30 days, or adjourns **sine die**.

34 **"§ 7A-9. Transitional provisions for judges in office on effective date of Article.**

1 (a) Any Justice or Judge holding a judgeship on January 15, 1990, that on January
2 14, 1990, is required by law to be filled by election shall be subject to the
3 reconfirmation procedures in G.S. 7A-7, and to the provisions of subsections (b) and
4 (c) below, to retain his office.

5 (b) A Justice or Judge covered by the provisions of subsection (a) who, at the end
6 of his term of office has at least four years of service in the office he is holding on
7 January 15, 1990, shall be subject to the reconfirmation process during the first
8 regular session convening in an odd-numbered year after the term expires. Terms of
9 such Justices and Judges are extended until August 31 of the year following the year
10 in which the term would have normally expired.

11 (c) A Justice or Judge covered by the provisions of subsection (a) who, at the end
12 of his term of office has less than four years in the office he is holding on January 15,
13 1990, shall be subject to the reconfirmation process in the first regular session
14 convening in an odd-numbered year after he would have four years in service in that
15 office, if continued in office past the expiration of his term. Terms of office of such
16 Justices and Judges shall be extended until August 31 of the year in which a
17 reconfirmation decision is made by the General Assembly."

18 Sec. 2. G.S. 7A-10(a) reads as rewritten:

19 "(a) The Supreme Court shall consist of a Chief Justice and six associate justices,
20 elected by the qualified voters of the State for terms of eight years selected as
21 provided by Article 1A of this Chapter. Before entering upon the duties of his office,
22 each justice shall take an oath of office. Four justices shall constitute a quorum for
23 the transaction of the business of the court. Sessions of the court shall be held in the
24 city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the
25 court's business."

26 Sec. 3. G.S. 7A-16 reads as rewritten:

27 **"§ 7A-16. Creation and organization.**

28 ~~The Court of Appeals is created effective January 1, 1967. It shall consist initially~~
29 ~~of six judges, elected by the qualified voters of the State for terms of eight years. The~~
30 ~~Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge.~~
31 ~~to serve in such capacity at the pleasure of the Chief Justice. Before entering upon~~
32 ~~the duties of his office, a judge of the Court of Appeals shall take the oath of office~~
33 ~~prescribed for a judge of the General Court of Justice.~~

34 ~~The Governor on or after July 1, 1967, shall make temporary appointments to the~~
35 ~~six initial judgeships. The appointees shall serve until January 1, 1969. Their~~

~~1 successors shall be elected at the general election for members of the General
2 Assembly in November, 1968, and shall take office on January 1, 1969, to serve for
3 the remainder of the unexpired term which began on January 1, 1967.~~

~~4 Upon the appointment of at least five judges, and the designation of a Chief Judge,
5 the court is authorized to convene, organize, and promulgate, subject to the approval
6 of the Supreme Court, such supplementary rules as it deems necessary and
7 appropriate for the discharge of the judicial business lawfully assigned to it.~~

~~8 Effective January 1, 1969, the number of judges is increased to nine, and the
9 Governor, on or after March 1, 1969, shall make temporary appointments to the
10 additional judgeships thus created. The appointees shall serve until January 1, 1971.
11 Their successors shall be elected at the general election for members of the General
12 Assembly in November, 1970, and shall take office on January 1, 1971, to serve for
13 the remainder of the unexpired term which began on January 1, 1969.~~

~~14 Effective January 1, 1977, the number of judges is increased to 12; and the
15 Governor, on or after July 1, 1977, shall make temporary appointments to the
16 additional judgeships thus created. The appointees shall serve until January 1, 1979.
17 Their successors shall be elected at the general election for members of the General
18 Assembly in November, 1978, and shall take office on January 1, 1979, to serve the
19 remainder of the unexpired term which began on January 1, 1977.~~

20 The Court of Appeals shall consist of 12 judges, selected as provided in Article 1A
21 of this Chapter. The Chief Justice of the Supreme Court shall designate one of the
22 Judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice.
23 Before entering upon the duties of his office, a judge of the Court of Appeals shall
24 take the oath of office prescribed for a judge of the General Court of Justice.

25 The Court of Appeals shall sit in panels of three judges each. The Chief Judge
26 insofar as practicable shall assign the members to panels in such fashion that each
27 member sits a substantially equal number of times with each other member. He shall
28 preside over the panel of which he is a member, and shall designate the presiding
29 judge of the other panel or panels.

30 Three judges shall constitute a quorum for the transaction of the business of the
31 court, except as may be provided in G.S. 7A-32.

32 In the event the Chief Judge is unable, on account of absence or temporary
33 incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice
34 shall appoint an acting Chief Judge from the other judges of the Court, to
35 temporarily discharge the duties of Chief Judge."

1 Sec. 4. G.S. 7A-41(d) is repealed.

2 Sec. 5. G.S. 7A-140 reads as rewritten:

3 **"§ 7A-140. Number; election; term; qualification; oath.**

4 There shall be at least one district judge for each district. ~~Each district judge shall~~
5 ~~be elected by the qualified voters of the district court district in which he is to serve~~
6 ~~at the time of the election for members of the General Assembly. Each district judge~~
7 shall be selected as provided by Article 1A of this Chapter. The number of judges
8 for each district shall be determined by the General Assembly. Each judge shall be a
9 resident of the district for which elected, ~~and shall serve a term of four years,~~
10 ~~beginning on the first Monday in December following his election.~~ selected.

11 Each district judge shall devote his full time to the duties of his office. He shall not
12 practice law during his term, nor shall he during such term be the partner or
13 associate of any person engaged in the practice of law.

14 Before entering upon his duties, each district judge, in addition to other oaths
15 prescribed by law, shall take the oath of office prescribed for a judge of the General
16 Court of Justice."

17 Sec. 6. G.S. 7A-142 is repealed.

18 Sec. 7. G.S. 7A-147 reads as rewritten:

19 **"§ 7A-147. Specialized judgeships.**

20 ~~(a) Prior to January 1 of each year in which elections for district court judges are~~
21 ~~to be held, the Administrative Officer of the Courts may, with the approval of the~~
22 ~~chief district judge, designate one or more judgeships in districts having three or~~
23 ~~more judgeships, as specialized judgeships, naming in each case the specialty.~~
24 ~~Designations shall become effective when filed with the State Board of Elections.~~
25 ~~Nominees for the position or positions of specialist judge shall be made in the~~
26 ~~ensuing primary and the position or positions shall be filled at the general election~~
27 ~~thereafter. The State Board of Elections shall prepare primary and general election~~
28 ~~ballots to effectuate the purposes of this section.~~

29 ~~(b) The designation of a specialized judgeship shall in no way impair the right of~~
30 ~~the chief district judge to arrange sessions for the trial of specialized cases and to~~
31 ~~assign any district judge to preside over these sessions. A judge elected to a~~
32 ~~specialized judgeship has the same powers as a regular district judge.~~

33 (c) The policy of the State is to encourage specialization in juvenile cases by
34 district court judges who are qualified by training and temperament to be effective in
35 relating to youth and in the use of appropriate community resources to meet their

1 needs. The Administrative Office of the Courts is therefore authorized to encourage
 2 judges who hear juvenile cases to secure appropriate training whether or not they
 3 were elected to a specialized judgeship as provided herein. Such training shall be
 4 provided within the funds available to the Administrative Office of the Courts for
 5 such training, and judges attending such training shall be reimbursed for travel and
 6 subsistence expenses at the same rate as is applicable to other State employees.

7 The Administrative Office of the Courts shall develop a plan whereby a district
 8 court judge may be better qualified to hear juvenile cases by reason of training,
 9 experience, and demonstrated ability. Any district court judge who completes the
 10 training under this plan shall receive a certificate to this effect from the
 11 Administrative Office of the Courts. In districts where there is a district court judge
 12 who has completed this training as herein provided, the chief district judge shall give
 13 due consideration in the assignment of such cases where practical and feasible."

14 Sec. 8. G.S. 163-106 reads as rewritten:

15 **"§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.**

16 (a) Notice and Pledge. -- No one shall be voted for in a primary election unless he
 17 shall have filed a notice of candidacy with the appropriate board of elections, State or
 18 county, as required by this section. To this end every candidate for selection as the
 19 nominee of a political party shall file with and place in the possession of the board of
 20 elections specified in subsection (c) of this section, a notice and pledge in the
 21 following form:

22 'Date

23 I hereby file notice as a candidate for nomination as in the party
 24 primary election to be held on, 19.... I affiliate with the party, (and I
 25 certify that I am now registered on the registration records of the precinct in which I
 26 reside as an affiliate of the party.)

27 I pledge that if I am defeated in the primary, I will not run for any office as a
 28 write-in candidate in the next general election.

29 Signed

30 Name of candidate

31 Witness:

32

33

34 (Title of witness)'

1 Each candidate shall sign his notice of candidacy in the presence of the chairman or
2 secretary of the board of elections, State or county, with which he files. In the
3 alternative, a candidate may have his signature on the notice of candidacy
4 acknowledged and certified to by an officer authorized to take acknowledgments and
5 administer oaths, in which case the candidate may mail his notice of candidacy to the
6 appropriate board of elections.

7 In signing his notice of candidacy the candidate shall use only his legal name
8 and, in his discretion, any nickname by which he is commonly known. A candidate
9 may also, in lieu of his legal first name and legal middle initial or middle name (if
10 any) sign his nickname, provided that he appends to the notice of candidacy an
11 affidavit that he has been commonly known by that nickname for at least five years
12 prior to the date of making the affidavit. The candidate shall also include with the
13 affidavit the way his name (as permitted by law) should be listed on the ballot if
14 another candidate with the same last name files a notice of candidacy for that office.

15 A notice of candidacy signed by an agent or any person other than the
16 candidate himself shall be invalid.

17 Prior to the date on which candidates may commence filing, the State Board of
18 Elections shall print and furnish, at State expense, to each county board of elections a
19 sufficient number of the notice of candidacy forms prescribed by this subsection for
20 use by candidates required to file with county boards of elections.

21 (b) Eligibility to File. -- No person shall be permitted to file as a candidate in a
22 primary if, at the time he offers to file notice of candidacy, he is registered on the
23 appropriate registration book or record as an affiliate of a political party other than
24 that in whose primary he is attempting to file. No person who has changed his
25 political party affiliation or who has changed from unaffiliated status to party
26 affiliation as permitted in G.S. 163-74(b), shall be permitted to file as a candidate in
27 the primary of the party to which he changed unless he has been affiliated with the
28 political party in which he seeks to be a candidate for at least 90 days prior to the
29 filing date for the office for which he desires to file his notice of candidacy.

30 A person registered as 'unaffiliated' shall be ineligible to file as a candidate in a
31 party primary election.

32 (c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary
33 nominations for the following offices shall file their notice of candidacy with the State
34 Board of Elections no earlier than 12:00 noon on the first Monday in January and no
35 later than 12:00 noon on the first Monday in February preceding the primary:

1 Governor

2 Lieutenant Governor

3 All State executive officers

4 ~~Justices of the Supreme Court, Judges of the Court of Appeals~~

5 ~~Judges of the superior courts~~

6 ~~Judges of the district courts~~

7 United States Senators

8 Members of the House of Representatives of the United States

9 District attorneys

10 Candidates seeking party primary nominations for the following offices shall file
11 their notice of candidacy with the county board of elections no earlier than 12:00
12 noon on the first Monday in January and no later than 12:00 noon on the first
13 Monday in February preceding the primary:

14 State Senators

15 Members of the State House of Representatives

16 All county offices.

17 (d) Notice of Candidacy for Certain Offices to Indicate Vacancy. -- In any
18 primary in which there are ~~two or more vacancies for Chief Justice and associate~~
19 ~~justices of the Supreme Court, two or more vacancies for judge of the Court of~~
20 ~~Appeals, or two vacancies for United States Senator from North Carolina or two or~~
21 ~~more vacancies for the office of district court judge~~ to be filled by nominations, each
22 candidate shall, at the time of filing notice of candidacy, file with the State Board of
23 Elections a written statement designating the vacancy to which he seeks nomination.
24 Votes cast for a candidate shall be effective only for his nomination to the vacancy
25 for which he has given notice of candidacy as provided in this subsection.

26 ~~A person seeking party nomination for a specialized district judgeship~~
27 ~~established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with~~
28 ~~the State Board of Elections a written statement designating the specialized judgeship~~
29 ~~to which he seeks nomination.~~

30 (e) Withdrawal of Notice of Candidacy. -- Any person who has filed notice of
31 candidacy for an office shall have the right to withdraw it at any time prior to the
32 date on which the right to file for that office expires under the terms of subsection (c)
33 of this section. If a candidate does not withdraw before the filing deadline, except as
34 provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes
35 for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or supervisor of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a notice of candidacy for a full term as a member of the United States House

1 of Representatives, and also file a notice of candidacy for the remainder of the
2 unexpired term in an election held under G.S. 163-13.

3 ~~(i) No person may file a notice of candidacy for superior court judge unless that~~
4 ~~person is at the time of filing the notice of candidacy a resident of the judicial district~~
5 ~~as it will exist at the time the person would take office if elected. No person may be~~
6 ~~nominated as a superior court judge under G.S. 163-114 unless that person is at the~~
7 ~~time of nomination a resident of the judicial district as it will exist at the time the~~
8 ~~person would take office if elected. This subsection implements Article IV Section~~
9 ~~9(1) of the North Carolina Constitution which requires regular Superior Court Judges~~
10 ~~to reside in the district for which elected. "~~

11 Sec. 9. G.S. 163-107(a) reads as rewritten:

12 "(a) Fee Schedule. -- At the time of filing a notice of candidacy, each candidate
13 shall pay to the board of elections with which he files under the provisions of G.S.
14 163-106 a filing fee for the office he seeks in the amount specified in the following
15 tabulation:

16		
17		
18	Office Sought	Amount of Filing Fee
19		
20	Governor	One percent (1%) of the annual salary
21		of the office sought
22	Lieutenant Governor	One percent (1%) of the annual salary
23		of the office sought
24	All State executive offices	One percent (1%) of the annual salary
25		of the office sought
26	All Justices, Judges, and District	One percent (1%) of the annual salary
27	Attorneys of the General Court of	of the office sought
28	Justice	
29	United States Senator	One percent (1%) of the annual salary
30		of the office sought
31	Members of the United States House	One percent (1%) of the annual salary
32	of Representatives	of the office sought
33	State Senator	One percent (1%) of the annual salary
34		of the office sought

1	Member of the State House of	One percent (1%) of the annual salary
2	Representatives	of the office sought
3	All county offices not compensated	One percent (1%) of the annual salary
4	by fees	of the office sought
5	County commissioners, if	Ten dollars (\$10.00)
6	compensated entirely by fees	
7	Members of county board of	Five dollars (\$5.00)
8	Education, if compensated	
9	entirely by fees	
10	Sheriff, if compensated entirely by	Forty dollars(\$40.00), plus one percent
11	fees	(1%) of the income of the office
12		above four thousand dollars
13		(\$4,000)
14	Clerk of superior court, if	Forty dollars (\$40.00), plus one percent
15	compensated entirely by fees	(1%) of the income of the office
16		above four thousand dollars
17		(\$4,000)
18	Register of deeds, if compensated	Forty dollars (\$40.00), plus one percent
19	entirely by Fees	(1%) of the income of the office
20		above four thousand dollars
21		(\$4,000)
22	Any other county office, if	Twenty dollars (\$20.00), plus one
23	compensated entirely by fees	percent (1%) of the income of the
24		office above two thousand dollars
25		(\$2,000)
26	All county offices compensated	One percent (1%) of the first annual
27	partly by salary and partly by fees	salary to be received (exclusive of
		fees)"

28 Sec. 10. G.S. 163-107.1 reads as rewritten:

29 **"§ 163-107.1. Petition in lieu of payment of filing fee.**

30 (a) Any qualified voter who seeks nomination in the party primary of the political
 31 party with which he affiliates may, in lieu of payment of any filing fee required for
 32 the office he seeks, file a written petition requesting him to be a candidate for a
 33 specified office with the appropriate board of elections, State, county or municipal.

1 (b) If the candidate is seeking the office of United States Senator, Governor,
2 Lieutenant Governor, any State executive officer, ~~Justice of the Supreme Court or~~
3 ~~Judge of the Court of Appeals~~, the petition must be signed by 10,000 registered voters
4 who are members of the political party in whose primary the candidate desires to
5 run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which
6 will be making nominations by primary election, the petition must be signed by ten
7 percent (10%) of the registered voters of the State who are affiliated with the same
8 political party in whose primary the candidate desires to run, or in the alternative,
9 the petition shall be signed by no less than 10,000 registered voters regardless of the
10 voter's political party affiliation, whichever requirement is greater. The petition must
11 be filed with the State Board of Elections not later than 12:00 noon on Monday
12 preceding the filing deadline before the primary in which he seeks to run. The names
13 on the petition shall be verified by the board of elections of the county where the
14 signer is registered, and the petition must be presented to the county board of
15 elections at least 15 days before the petition is due to be filed with the State Board of
16 Elections. When a proper petition has been filed, the candidate's name shall be
17 printed on the primary ballot.

18 (c) County, Municipal and District Primaries. -- If the candidate is seeking one of
19 the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this
20 section, or a municipal or any other office requiring a partisan primary which is not
21 set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate
22 board of elections no later than 12:00 noon on Monday preceding the filing deadline
23 before the primary. The petition shall be signed by ten percent (10%) of the
24 registered voters of the election area in which the office will be voted for, who are
25 affiliated with the same political party in whose primary the candidate desires to run,
26 or in the alternative, the petition shall be signed by no less than 200 registered voters
27 regardless of said voter's political party affiliation, whichever requirement is greater.
28 The board of elections shall verify the names on the petition, and if the petition is
29 found to be sufficient, the candidate's name shall be printed on the appropriate
30 primary ballot. Petitions for candidates for member of the U.S. House of
31 Representatives, District Attorney, ~~judge of the District Court and judge of the~~
32 ~~Superior Court~~, or members of the State House of Representatives from multi-county
33 districts or members of the State Senate from multi-county districts must be presented
34 to the county board of elections for verification at least 15 days before the petition is
35 due to be filed with the State Board of Elections, and such petition must be filed with

1 the State Board of Elections no later than 12:00 noon on Monday preceding the filing
2 deadline. The State Board of Elections may adopt rules to implement this section and
3 to provide standard petition forms.

4 (d) Nonpartisan Primaries and Elections. -- Any qualified voter who seeks to be a
5 candidate in any nonpartisan primary or election may, in lieu of payment of the filing
6 fee required, file a written petition signed by ten percent (10%) of the registered
7 voters in the election area in which the office will be voted for with the appropriate
8 board of elections. Any qualified voter may sign the petition. The petition shall state
9 the candidate's name, address and the office which he is seeking. The petition must
10 be filed with the appropriate board of elections no later than 60 days prior to the
11 filing deadline for the primary or election, and if found to be sufficient, the
12 candidate's name shall be printed on the ballot."

13 Sec. 11. G.S. 163-108(b) reads as rewritten:

14 "(b) No later than 10 days after the time for filing notices of candidacy under the
15 provisions of G.S. 163-106(c) has expired, the chairman of the State Board of
16 Elections shall certify to the chairman of the county board of elections in each county
17 in the appropriate district the names of candidates for nomination to the following
18 ~~offices~~ office of District Attorney who have filed the required notice and pledge and
19 paid the required filing fee to the State Board of Elections, so that their names may
20 be printed on the official county ballots: ~~Superior court judge, district court judge,~~
21 ~~and district~~ District attorney."

22 Sec. 12. G.S. 163-109 reads as rewritten:

23 **"§ 163-109. Primary ballots; printing and distribution.**

24 (a) General. -- In primary elections there shall be as many kinds of official State,
25 district, and county ballots as there are legally recognized political parties, members
26 of which have filed notice of their candidacy for nomination. The ballots for each
27 political party shall be printed to conform to the requirements of G.S. 163-140(c) and
28 to show the party's name, the name of each party member who has filed notice of
29 candidacy, and the office for which each aspirant is a candidate.

30 Only those who have filed the required notice of candidacy and pledge with the
31 proper board of elections, and who have paid the required filing fee, shall have their
32 names printed on the official ballots of the political party with which affiliated.

33 (b) Ballots to Be Furnished by State Board of Elections. -- It shall be the duty of
34 the State Board of Elections to print official ballots for each political party having
35 candidates for the following offices to be voted for in the primary:

1 United States Senator,

2 Member of the House of Representatives of the United States Congress,

3 Governor, and

4 All other State offices, except ~~superior court judge, district court judge, and district~~
5 attorney.

6 In its discretion, the State Board of Elections may print separate primary ballots for
7 each of these offices, or it may combine some or all of them on a single ballot.

8 At least 60 days before the date of the primary, the State Board of Elections shall
9 deliver a sufficient number of these ballots to each county board of elections. The
10 chairman of the county board of elections shall furnish the chairman of the State
11 Board of Elections with a written receipt for the ballots delivered to him within two
12 days after their receipt.

13 (c) Ballots to Be Furnished by County Board of Elections. -- It shall be the duty of
14 the county board of elections to print official ballots for each political party having
15 candidates for the following offices to be voted for in the primary:

16 ~~Superior court judge,~~

17 ~~District court judge,~~

18 District attorney,

19 State Senator,

20 Member of the House of Representatives of the General Assembly, and

21 All county offices.

22 In printing primary ballots, the county board of elections shall be governed by
23 instructions of the State Board of Elections with regard to width, color, kind of paper,
24 form, and size of type.

25 In its discretion, the county board of elections may print separate primary ballots
26 for the district and county offices listed in this subsection, or it may combine some or
27 all of them on a single ballot. In a primary election, if there shall be 10 or more
28 candidates for nomination to any one office, the county board of elections in its
29 discretion may prepare a separate ballot for said office.

30 Three days before the primary election, the chairman of the county board of
31 elections shall distribute official State, district, and county ballots to the registrar of
32 each precinct in his county, and the registrar shall give him a receipt for the ballots
33 received. On the day of the primary it shall be the registrar's duty to have all the
34 ballots delivered to him available for use at the precinct voting place."

35 Sec. 13. G.S. 163-111(c) reads as rewritten:

1 "(c) Procedure for Requesting Second Primary. --

2 (1) A candidate who is apparently entitled to demand a second primary,
3 according to the unofficial results, for one of the offices listed below, and desiring to
4 do so, shall file a request for a second primary in writing or by telegram with the
5 Executive Secretary-Director of the State Board of Elections no later than 12:00 noon
6 on the seventh day (including Saturdays and Sundays) following the date on which
7 the primary was conducted, and such request shall be subject to the certification of
8 the official results by the State Board of Elections. If the vote certification by the
9 State Board of Elections determines that a candidate who was not originally thought
10 to be eligible to call for a second primary is in fact eligible to call for a second
11 primary, the Executive Secretary-Director of the State Board of Elections shall
12 immediately notify such candidate and permit him to exercise any options available
13 to him within a 48-hour period following the notification:

14 Governor,

15 Lieutenant Governor,

16 All State executive officers,

17 ~~Justices, Judges, or~~ District Attorneys of the General Court of Justice,

18 United States Senators,

19 Members of the United States House of Representatives,

20 State Senators in multi-county senatorial districts, and

21 Members of the State House of Representatives in multi-county representative
22 districts.

23 (2) A candidate who is apparently entitled to demand a second primary, according
24 to the unofficial results, for one of the offices listed below and desiring to do so, shall
25 file a request for a second primary in writing or by telegram with the chairman or
26 supervisor of the county board of elections no later than 12:00 noon on the seventh
27 day (including Saturdays and Sundays) following the date on which the primary was
28 conducted, and such request shall be subject to the certification of the official results
29 by the county board of elections:

30 State Senators in single-county senatorial districts.

31 Members of the State House of Representatives in single-county representative
32 districts, and

33 All county officers.

34 (3) Immediately upon receipt of a request for a second primary the appropriate
35 board of elections, State or county, shall notify all candidates entitled to participate in

1 the second primary, by telephone followed by written notice, that a second primary
2 has been requested and of the date of the second primary."

3 Sec. 14. G.S. 163-114 reads as rewritten:

4 "**§ 163-114. Filling vacancies among party nominees occurring after nomination and**
5 **before election.**

6 If any person nominated as a candidate of a political party for one of the offices
7 listed below (either in a primary or convention or by virtue of having no opposition
8 in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before
9 the date of the ensuing general election, the vacancy shall be filled by appointment
10 according to the following instructions:

11		
12		
13	Position	Vacancy is to be filled by
14	Any elective State office	appointment of State
15	United States Senator	executive committee of
16		political party in which
17		vacancy occurs
18		
19	A district office, including:	
20	Member of the United States	
21	House of Representatives	
22	Judge of superior court	
23	Judge of district court	Appropriate district executive
24	District Attorney	committee of political party
25	State Senator in a multi-	in which vacancy occurs
26	county senatorial district	
27	Member of State House of	
28	Representatives in a multi-	
29	county representative	
30	district	
31		
32	State Senator in a single-	County executive committee
33	county senatorial district	of political party in which
34	Member of State House of	vacancy occurs, provided, in
35	Representatives in a	the case of the State
36	single-county	Senator or State
37	representative district	Representative in a

1	Any elective county office		single-county district where
2			not all the county is
3			located in that district,
4			then in voting, only those
5			members of the county
6			executive committee who
7			reside within the
8			district shall vote
9			
10	Judge of Superior Court in a		County executive committee
11	single county superior		of political party in
12	court district where the		which vacancy occurs;
13	district is the whole		provided, in the case of
14	county or part of the		a superior court judge in a
15	county		single county district where
16			not all the county is
17			located in that district.
18			then in voting, only those
19			members of the county
20			executive committee who
21			reside within the
22			district shall vote
23			
24	Judge of Superior Court in a		Appropriate district
25	multi county superior		executive committee of
26	court district		political party in which
27			vacancy occurs.

28 The party executive making a nomination in accordance with the provisions of this
 29 section shall certify the name of its nominee to the chairman of the board of
 30 elections, State or county, charged with the duty of printing the ballots on which the
 31 name is to appear. If at the time a nomination is made under this section the general
 32 election ballots have already been printed, the provisions of G.S. 163-139 shall apply.
 33 If any person nominated as a candidate of a political party vacates such nomination
 34 and such vacancy arises from a cause other than death and the vacancy in nomination
 35 occurs more than 120 days before the general election, the vacancy in nomination
 36 may be filled under this section only if the appropriate executive committee certifies

1 the name of the nominee in accordance with this paragraph at least 90 days before
2 the general election.

3 ~~In a county which is partly in a multi-county superior court district, in choosing~~
4 ~~that county's member or members of the superior court district executive committee~~
5 ~~for the multi-county district, only the county convention delegates or county~~
6 ~~executive committee members who reside within the area of the county which is~~
7 ~~within that multi-county district may vote.~~

8 In a county not all of which is located in one congressional district, in choosing the
9 congressional district executive committee member or members from that area of the
10 county, only the county convention delegates or county executive committee
11 members who reside within the area of the county which is within the congressional
12 district may vote.

13 In a county which is partly in a multi-county senatorial district or which is partly
14 in a multi-county House of Representatives district, in choosing that county's member
15 or members of the senatorial district executive committee or House of
16 Representatives district executive committee for the multi-county district, only the
17 county convention delegates or county executive committee members who reside
18 within the area of the county which is within that multi-county district may vote."

19 Sec. 15. G.S. 163-140(a) reads as rewritten:

20 (a) Kinds of General Election Ballots; Right to Combine. -- For purposes of
21 general elections, there shall be seven kinds of official ballots entitled:

- 22 (1) Ballot for presidential electors
- 23 (2) Ballot for United States Senator
- 24 (3) Ballot for member of the United States House of Representatives
- 25 (4) State ballot
- 26 (5) County ballot
- 27 (7) Ballot for constitutional amendments and other propositions
28 submitted to the people.

29 Use of official ballots shall be limited to the purposes indicated by their titles. The
30 printing on all ballots shall be plain and legible but, unless large type is specified by
31 this section, type larger than 10-point shall not be used in printing ballots. All general
32 election ballots shall be prepared in such a way as to leave sufficient blank space
33 beneath each name printed thereon in which a voter may conveniently write the
34 name of any person for whom he may desire to vote.

1 Unless prohibited by this section, the board of elections, State or county, charged
2 by law with printing ballots may, in its discretion, combine any two or more official
3 ballots. Whenever two or more ballots are combined, the voting instructions for the
4 State ballot set out in subsection (b)(4) of this section shall be used, except that if the
5 two ballots being combined do not contain a multi-seat race, then the second
6 sentence of instruction b shall not appear on the ballot.

7 ~~If the State Board of Elections divides the State ballot into two or more ballots, all~~
8 ~~candidates for superior court shall appear on the same ballot except that the State~~
9 ~~Board of Elections may divide the election of superior court judges into two ballots~~
10 ~~either because of length of the ballot or to provide a separate ballot for multi-seat~~
11 ~~races but only superior court judges shall be on those ballots, and all candidates for~~
12 ~~the Appellate Division shall appear on the same ballot."~~

13 Sec. 15.1. G.S. 163-140(b)(4) reads as rewritten:

14 "(4) State Ballot: Beneath the title and general instructions set out in this
15 subsection, the ballot for single-seat contests for State officers, and for all State
16 officers where mechanical voting machines are used ~~(including judges of the superior~~
17 ~~court)~~ shall be divided into parallel columns separated by distinct black lines. The
18 State Board of Elections shall assign a separate column to each political party having
19 candidates for State offices and one to unaffiliated candidates, if any. At the head of
20 each party column the party's name shall be printed in large type, and at the head of
21 the column for unaffiliated candidates shall be printed in large type the words
22 'Unaffiliated Candidates.' Below the party name in each column shall be printed a
23 circle, one-half inch in diameter, around which shall be plainly printed the following
24 instruction: 'For a straight ticket, mark within this circle.' With distinct black lines,
25 the State Board of Elections shall divide the columns into horizontal sections and, in
26 the customary order of office, assign a separate section to each office or group of
27 offices to be filled. On a single line at the top of each section shall be printed a
28 direction as to the number of candidates for whom a vote may be cast. If candidates
29 are to be chosen for different terms to the same office, the term in each instance shall
30 be printed as part of the title of the office.

31 The name or names of each political party's candidate or candidates for each
32 office listed on the ballot shall be printed in the appropriate office section of the
33 proper party column, and the names of unaffiliated candidates shall be printed in the
34 appropriate office section of the column headed 'Unaffiliated Candidates.' At the left

1 of each name shall be printed a voting square, and in each column all voting squares
2 shall be arranged in a perpendicular line.

3 On the face of the ballot, above the party and unaffiliated column division, the
4 following instructions shall be printed in heavy black type:

- 5 'a. To vote for all candidates of one party (a straight ticket), make a
6 cross (X) mark in the circle of the party for whose candidates you
7 wish to vote.
- 8 b. You may vote a split ticket by marking a cross (X) mark in the
9 party circle and then making a cross (X) mark in the square
10 opposite the name of the candidate(s) of a different party for
11 whom you wish to vote. In any multi-seat race where a party
12 circle is marked and you vote for candidates of another party, in
13 order for your vote to count for any candidates for that office of
14 the party for which you marked the party circle you must make a
15 cross (X) mark opposite the name of those candidate(s).
- 16 c. You may also vote a split ticket by not marking a cross (X) mark
17 in the party circle, but by making a cross (X) mark in the square
18 opposite the name of each candidate for whom you wish to vote.
- 19 d. If you tear or deface or wrongly mark this ballot, return it and get
20 another.'

21 On the bottom of the ballot shall be printed an identified facsimile of the signature
22 of the Chairman of the State Board of Elections. If the State ballot contains no
23 multi-seat race, then the second sentence of instruction b. shall not appear on the
24 ballot."

25 Sec. 15.2. G.S. 163-140(b)(5) reads as rewritten:

26 "(5) County Ballot: Beneath the title and general instructions set out in this
27 subsection, the ballot for single-seat contests for county officers (including district
28 attorney for the prosecutorial district in which the county is situated, ~~district judge for~~
29 ~~the district court district in which the county is situated~~, and members of the General
30 Assembly in the senatorial and representative districts in which the county is
31 situated), and for all county offices where mechanical voting machines are used, shall
32 be divided into parallel columns separated by distinct black lines. The county board
33 of elections shall assign a separate column to each political party having candidates
34 for the offices on the ballot and one to unaffiliated candidates, if any. At the head of
35 each party column the party's name shall be printed in large type and at the head of

1 the column for unaffiliated candidates shall be printed in large type the words
2 'Unaffiliated Candidates.' Below the party name in each column shall be printed a
3 circle, one-half inch in diameter, around which shall be plainly printed the following
4 instruction: 'For a straight ticket, mark within this circle.' With distinct black lines,
5 the county board of elections shall divide the columns into horizontal sections and, in
6 the customary order of office, assign a separate section to each office or group of
7 offices to be filled. On a single line at the top of each section shall be printed the title
8 of the office, and directly below the title shall be printed a direction as to the number
9 of candidates for whom a vote may be cast. If candidates are to be chosen for
10 different terms to the same office, the term in each instance shall be printed as part of
11 the title of the office.

12 The name or names of each political party's candidate or candidates for each
13 office listed on the ballot shall be printed in the appropriate office section of the
14 proper party column, and the names of unaffiliated candidates shall be printed in the
15 appropriate office section of the column headed 'Unaffiliated Candidates.' At the left
16 of each name shall be printed a voting square, and in each column all voting squares
17 shall be arranged in a perpendicular line.

18 On the face of the ballot, above the party and unaffiliated column division, the
19 following instructions shall be printed in heavy black type:

- 20 'a. To vote for all candidates of one party (a straight ticket), make a
21 cross (X) mark in the circle of the party for whose candidates you
22 wish to vote.
- 23 b. You may vote a split ticket by marking a cross (X) mark in the
24 party circle and then making a cross (X) mark in the square
25 opposite the name of the candidate(s) of a different party for
26 whom you wish to vote. In any multi-seat race where a party
27 circle is marked and you vote for candidates of another party, in
28 order for your vote to count for any candidates for that office of
29 the party for which you marked the party circle you must make a
30 cross (X) mark opposite the name of those candidate(s).
- 31 c. You may also vote a split ticket by not marking a cross (X) mark
32 in the party circle, but by making a cross (X) mark in the square
33 opposite the name of each candidate for whom you wish to vote.
- 34 d. If you tear or deface or wrongly mark this ballot, return it and get
35 another.'

1 On the bottom of the ballot shall be printed an identified facsimile of the signature
2 of the chairman of the county board of elections. If the county ballot contains no
3 multi-seat race, then the second sentence of instruction b. shall not appear on the
4 ballot."

5 Sec. 16. G.S. 163-156 is repealed.

6 Sec. 17. G.S. 163-177 reads as rewritten:

7 **"§ 163-177. Disposition of duplicate abstracts.**

8 Within six hours after the returns of a primary or election have been canvassed
9 and the results judicially determined, the chairman of the county board of elections
10 shall mail, or otherwise deliver, to the State Board of Elections the duplicate-original
11 abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for
12 which the State Board of Elections is required to canvass the votes and declare the
13 results including:

14 President and Vice-President of the United States

15 Governor, Lieutenant Governor, and all other State executive officers

16 United States Senators

17 Members of the House of Representatives of the United States Congress

18 ~~Justices, Judges, and~~ District Attorneys of the General Court of Justice

19 State Senators in multi-county senatorial districts

20 Members of the State House of Representatives in multi-county representative
21 districts

22 Constitutional amendments and propositions submitted to the voters of the State.

23 One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and
24 referenda for which the county board of elections is required to canvass the votes and
25 declare the results (and which are listed below) shall be retained by the county board,
26 which shall forthwith publish and declare the results; the second duplicate abstract
27 shall be mailed to the chairman of the State Board of Elections, to the end that there
28 be one set of all primary and election returns available at the seat of government.

29 All county offices

30 State Senators in single-county senatorial districts

31 Members of the State House of Representatives in single-county representative
32 districts

33 Propositions submitted to the voters of one county.

34 If the chairman of the county board of elections fails or neglects to transmit
35 duplicate abstracts to the chairman of the State Board of Elections within the time

1 prescribed in this section, he shall be guilty of a misdemeanor. Provided, that the
2 penalty shall not apply if the chairman was prevented from performing the prescribed
3 duty because of sickness or other unavoidable delay, but the burden of proof shall be
4 on the chairman to show that his failure to perform was due to sickness or
5 unavoidable delay."

6 Sec. 18. G.S. 163-192 reads as rewritten:

7 **"§ 163-192. State Board of Elections to prepare abstracts and declare results of**
8 **primaries and elections.**

9 (a) After Primary. -- At the conclusion of its canvass of the primary election, the
10 State Board of Elections shall prepare separate abstracts of the votes cast:

11 (1) For Governor and all State officers, ~~justices of the Supreme Court,~~
12 ~~judges of the Court of Appeals, judges of the superior court, and~~
13 ~~United States Senators.~~

14 (2) For members of the United States House of Representatives for the
15 several congressional districts in the State.

16 ~~(3) For district court judges for the several district court districts in the~~
17 ~~State.~~

18 (4) For district attorney in the several prosecutorial districts in the
19 State.

20 (5) For State Senators in the several senatorial districts in the State
21 composed of more than one county.

22 (6) For members of the State House of Representatives in the several
23 representative districts in the State composed of more than one
24 county.

25 Abstracts prepared by the State Board of Elections under this subsection shall state
26 the total number of votes cast for each candidate of each political party for each of
27 the various offices canvassed by the State Board of Elections. They shall also state the
28 name or names of the person or persons whom the State Board of Elections shall
29 ascertain and judicially determine by the count to be nominated for each office.

30 Abstracts prepared under this subsection shall be signed by the members of the
31 State Board of Elections in their official capacity and shall have the great seal of the
32 State affixed thereto.

33 (b) After General Election. -- At the conclusion of its canvass of the general
34 election, the State Board of Elections shall prepare abstracts of the votes cast:

- (1) For President and Vice-President of the United States, when an election is held for those offices.
- (2) For Governor and all State officers, ~~justices of the Supreme Court, judges of the Court of Appeals, judges of the superior court, and~~ United States Senators.
- (3) For members of the United States House of Representatives for the several congressional districts in the State.
- ~~(4) For district court judges for the several district court district as defined in G.S. 7A-133 in the State.~~
- (5) For district attorney in the several prosecutorial districts in the State.
- (6) For State Senators in the several senatorial districts in the State composed of more than one county.
- (7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.
- (8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(c) Disposition of Abstracts of Returns. -- The State Board of Elections shall file with the Secretary of State the original abstracts of returns prepared by it under the provisions of subsections (a) and (b) of this section, and also the duplicate county abstracts transmitted to the State Board of Elections under the provisions of G.S. 163-177."

Sec. 19. G.S. 163-194 reads as rewritten:

"§ 163-194. Governor to issue commissions to certain elected officials.

1 Every person duly elected to one of the offices listed below, upon obtaining a
2 certificate of his election from the Secretary of State under the provisions of G.S.
3 163-193, shall procure from the Governor a commission attesting his election to the
4 specified office, which the Governor shall issue upon production of the Secretary of
5 State's certificate:

6 Members of the United States House of Representatives,
7 ~~Justices, Judges, and~~ District Attorneys of the General Court of Justice."

8 Sec. 20. G.S. 163-1 is amended in the table by deleting the entries for
9 "Judge of the superior courts", "Judges of the district courts", and "Justices and
10 Judges of the Appellate Division".

11 Sec. 21. G.S. 163-9 is repealed.

12 Sec. 22. This act shall become effective only if the amendments to the
13 Constitution of North Carolina proposed by AN ACT TO AMEND THE NORTH
14 CAROLINA CONSTITUTION TO PROVIDE FOR APPOINTMENT OF
15 JUSTICES AND JUDGES BY THE GOVERNOR, WITH THE ADVICE AND
16 CONSENT OF THE GENERAL ASSEMBLY, AND TO AUTHORIZE THE
17 GENERAL ASSEMBLY TO PROVIDE FOR A PROCEDURE TO DETERMINE
18 IF JUDGES SO APPOINTED SHOULD BE RETAINED IN OFFICE are approved
19 by the voters, and if so approved, this act shall become effective January 15, 1990.

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